



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

**[WC Docket No. 13-184; FCC 14-99]**

Modernization of the Schools and Libraries “E-rate” Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks further comment on meeting the future funding needs of the E-rate program in light of the goals we adopt for the program in an accompanying Report and Order. The Commission acknowledges that modernizing a program of this size and scope cannot be accomplished at once and so it will continue to seek public input and additional ideas to bring 21<sup>st</sup> Century broadband to libraries and schools throughout the country.

**DATES:** Comments are due on or before **September 15, 2014** and reply comments are due on or before **September 30, 2014**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by either WC Docket No. 13-184, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission’s Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** James Bachtell or Kate Dumouchel, Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418-7400 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 13-184; FCC 14-99, adopted on July 11, 2014 and released on July 23, 2014. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12<sup>th</sup> St., SW, Washington, DC 20554 or at the following Internet address: <http://www.fcc.gov/document/fcc-releases-e-rate-modernization-order>. The Report and Order that was adopted concurrently with the FNPRM is published elsewhere in this issue of the Federal Register.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325,

Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

## **I. FURTHER NOTICE OF PROPOSED RULEMAKING**

1. In this FNPRM we seek further comment on meeting the future funding needs of the E-rate program in light of the goals we adopt for the program today. We also seek comment on several discrete issues that may further simplify the administration of the E-rate program by continuing to reduce the burden on applicants of applying for and receiving E-rate support, as well as promoting cost-effective purchasing through multi-year contracts and consortium purchasing. Specifically, we seek comment on ensuring that multi-year contracts are efficient. We also seek comment on proposals to ensure the efficient use of NSLP data. In particular, we seek to require participating NSLP schools to use their NSLP eligibility for purposes of calculating their school's discount rate calculation, rather than continue to permit more costly and administratively burdensome income surveys. We also seek comment on proposals that will encourage consortium participation by easing the concerns of consortia participants by calculating the consortia's discount rate using a weighted average. We further seek comment on whether there are any additional programmatic or rule changes that will encourage applicants to join consortia either through additional incentives, or reduced application burdens. Finally, we seek additional comment on how best to calculate the amount of funding eligible libraries need in order to purchase Wi-Fi networks

and other internal connections.

2. Furthermore, as we consider next steps to further modernize the E-rate program, we invite comment on additional improvements to the E-rate program. In particular, we seek comment on additional steps we can take to further the goals we adopt in the accompanying Report and Order. To encourage the deployment of whole networks, are there additional changes to the E-rate program that we should adopt to meet the connectivity needs of schools and libraries? Are there other ways we can foster cost-effective purchasing throughout the program? Are there more changes that we can make to further improve the application process or to otherwise improve the administration of the program? Are there other data that we can and should collect in furtherance of our goals for the E-rate program? We acknowledge that modernizing a program of this size and scope cannot be accomplished at once and so we continue to seek public input and additional ideas to bring 21<sup>st</sup> Century broadband to libraries and schools throughout the country.

**A. Meeting Future Funding Needs**

3. In light of the goals we have adopted for the E-rate program and the changes that we have made to the program, we seek additional comment on the future funding levels needed for the E-rate program to meet those goals. In the accompanying Report and Order, we have taken a number of significant steps that lay the foundation for this evaluation and that will help structure our analysis. First, we have set specific goals and connectivity targets for the program, which we can now use to size future funding needs. Second, we have taken major steps to refocus E-rate funding on broadband, in order to maximize the funding available to meet our connectivity goals. Third, we have taken new strides to increase the efficiency and impact of E-rate funding, which should help drive down per-unit pricing for E-rate supported services over time. Fourth, we have set a specific target of providing \$1 billion annually in E-rate support for category two services, in order to provide discounts to all eligible schools and libraries seeking to make LAN and WLAN deployments. These steps now put us in a strong position to consider the longer-term program needs and how they compare to currently available funding. Numerous commenters have called on the Commission to raise the E-rate funding cap, which was set in 1997, and

only began to be adjusted for inflation in 2011. Others have, more specifically, called on the Commission to focus on providing increased funding for connectivity to eligible schools and libraries, particularly those that have not been able to afford access to high-speed connections, and argue that doing so will require additional support. Other commenters have argued that the funding cap should not be raised. In light of the steps described, we now seek specific comment on how much funding is needed to meet the E-rate programs goals, keeping in mind our responsibility to minimize the overall Universal Service Fund contribution burden on businesses and consumers. In particular, we seek data and analysis in the following four areas:

- First, we invite data regarding the gap between schools' and libraries' current connectivity and the specific connectivity targets we adopt here. In particular, we request this data with respect to WAN connections and Internet connections, using those terms as defined in the accompanying Report and Order. Several states and providers have submitted such data already. We invite further submissions, as well as analyses of what overall conclusions can be drawn from the existing data. How is the accelerated deployment of internal connections that the accompanying Report and Order promotes likely to affect the pace at which high-speed connectivity needs to school and library premises grow?
- Second, we seek specific information on how much funding is needed to bridge those gaps in light of likely pricing for broadband services—both WAN and Internet—taking into account the significant new efficiency measures we adopt here, as well as general industry trends in broadband pricing over time.
- Third, we seek further comment on the per-student and per-square foot budgets we have adopted for internal connections funding for funding years 2015 and 2016, whether these budgets should be continued in future funding years, and the closely related question of the \$1 billion funding target we adopt for category two services. Will these budgets be sufficient to meet schools and libraries need for Wi-Fi and other internal connections?

Are they too generous? Are there other approaches we can take to ensuring sufficient funding for category two services?

- Finally, we seek comment on the sufficiency of the significant funding freed up by the reforms adopted herein to meet these needs. In particular, we seek comment on the extent to which focusing the program on broadband frees sufficient funding to meet long term connectivity needs.

4. We also seek comment on how the substantial reduction in the real purchasing power of the E-rate budget since the program's creation should affect our analysis. As several commenters have noted, the E-rate cap was not adjusted for inflation between 1998 and 2010. By most general measures of inflation, this resulted in an approximately \$800-900 million reduction in the real purchasing power of E-rate funding. We seek additional comment on this issue.

**B. Ensuring That Multi-Year Contracts Are Efficient**

5. As part of our continuing efforts to promote cost-effective purchasing, we propose to limit E-rate support to eligible services purchased under contracts of no more than five years, including voluntary extensions. We propose to exempt from this requirement contracts that require large capital investments to install new facilities expected to have a useful life of 20 years or more. Currently, our rules do not specify a maximum length for contracts for E-rate supported services, but as the Commission explained in the E-rate Modernization NPRM, 78 FR 51597, August 20, 2013, we seek to balance the advantages that longer term contracts give applicants against the opportunity that shorter term contracts give applicants to take advantage of rapidly falling prices in a dynamic marketplace.

6. In the E-rate Modernization NPRM, the Commission sought comment on whether it should limit the maximum term (including voluntary extensions) of multi-year contracts that applicants may enter into for E-rate-supported services to three years. We agree with those commenters who argue that a three-year maximum contract length does not adequately balance the needs of applicants against the benefits of regular contract negotiations. Some commenters suggested that five years was the right length for E-rate supported contracts. However, the record is not particularly robust on how a five-year

maximum contract length would affect schools' and libraries' ability to purchase from state master contracts, which often exceed five years, or to enter into contracts that seek to spread the cost of infrastructure builds over many years. Therefore, we invite commenters to revisit the issue of maximum contract length, and we seek comment on the benefits and drawbacks of our new proposal.

7. Commenters generally agree that the markets for E-rate supported services, both broadband services and internal connections, are dynamic, and prices, particularly of broadband services on a per-megabit-basis, have consistently been declining over time. As a result, shorter-term contracts allow applicants to take advantage of falling market prices, and protect applicants from being locked into prices substantially higher than the market rate. On the other hand, we are mindful of the importance of multi-year agreements to schools and libraries and the benefits these agreements provide, including cost efficiencies. Commenters also report that having the flexibility to enter into multi-year agreements can allow applicants to negotiate more favorable terms over the life of the contract. Furthermore, multi-year agreements can increase administrative efficiencies for applicants and vendors because they do not have to rebid contracts annually. Moreover, we are revising our rules to simplify the process for seeking E-rate support for multi-year contracts of five years or less. On the issue of whether five years strikes the right balance, we seek comment on whether there are particular E-rate supported services for which we should require shorter maximum contract lengths because the price of such services is so dynamic or for other reasons. We seek comment on what such services might be, and why we should require all contracts for such services to be less than five years, and how much less. Are there services for which we should allow longer maximum contract lengths? What might such services be and why should we allow longer maximum contract lengths for such services? How long should the maximum contract length be for such services?

8. State and other master contracts. We believe that limiting most contracts for E-rate supported services to five years generally strikes the right balance between the interests described. However, we seek comment on how this approach will affect schools' and libraries' current procurement processes, and in particular how it will affect their ability to purchase from state or other master contracts,

service agreements, or joint purchasing agreements. Some commenters have expressed concern that the maximum length of a contract for E-rate supported services should be determined by – or at least should not conflict with – state and local procurement decisions and laws. As a practical matter, no commenter has offered an example of a state law that would require service contracts to extend beyond five years and the record demonstrates that many of these state and local procurement laws do not allow contracts beyond five years. If a state has a requirement that would conflict with a maximum duration that we set, we seek comment on whether we should grant applicants in that state a waiver of this rule or select a longer duration, consistent with the laws and rules in all states. Are there other reasons that we should allow E-rate applicants to purchase E-rate supported services using state and other master contracts, service agreements or joint purchasing agreements with terms that are longer than five years?

9. Alternatives to maximum duration. We also seek comment on other ways to achieve our goal of ensuring that schools and libraries can take advantage of falling prices for E-rate supported services while minimizing administrative burdens. For example, would it be sufficient to require that contracts for E-rate supported services include a provision requiring the applicant to renegotiate the contract or otherwise seek lower prices at least once every five years? How could we ensure such renegotiation results in the best possible pricing for E-rate supported services? Alternatively, might we permit longer-term contracts for E-rate services if they include provisions that would help ensure that applicants enjoyed the benefits of declining prices of bandwidth and their likely increasing demand for it? Thus, should we allow a contract that sets a fixed price for an increasing level of bandwidths over the term of the contract, based on applicants' anticipated needs and the rapid declining price of bandwidth?

10. New builds. We also seek comment on our proposal to allow longer contracts for services that require infrastructure build-outs. We recognize that long-term contracts may be the most efficient way to contract for the installation of a new dedicated fiber connection, or other such facility, which is likely to have a useful life of 20 years or more. However, in response to the E-rate Modernization NPRM, we received no comments arguing that providers need the flexibility to offer such long-term contracts, or that applicants need the option of long-term contracts to purchase affordable



services. We therefore seek focused comment on how to ensure the most effective competition for the provision of new fiber builds, or other such infrastructure projects.

11. The E-rate program currently provides support for special construction charges separate from the charges for recurring services. Does this obviate the need for longer-term contracts? We also seek comment on whether the winner of an initial short term contract would likely face any serious competition over subsequent terms, once it had recovered its capital investment. We seek comment on whether a 20-year contract might be most likely to allow a service provider to amortize its installation costs once over the entire contract, while some indexing or similar arrangement could provide E-rate applicants with the increasing bandwidths they would likely desire over the period at no additional cost above the costs of upgrading the electronics to provide the higher bandwidth.

12. Assuming that we adopt some restriction on the duration of contracts for E-rate services discussed, we recognize some existing long-term contracts for E-rate supported services are likely to violate such new restrictions. While we would require all new contracts executed after the effective date of the proposed rule to be in compliance, we seek comment on whether we should grandfather existing E-rate contracts, and if so, for how long a period of time. We also seek comment on whether, if we did not grandfather such contracts, we would have legal authority to require existing long-term contracts to comply with a limitation. Further, we seek comment on whether, if we do have such authority, we should set a date by which parties would be able to amend existing contracts to comply with such a limitation, and if so, how much time we should allow for such amendments.

### **C. Standardizing the Collection of NSLP Data**

13. As part of our continuing efforts to streamline the administration of the E-rate program, we propose to standardize USAC's collection of data about participation in the United States Department of Agriculture's (USDA's) NSLP for purposes of calculating schools' and libraries' E-rate discount rates. Currently schools use NSLP data to determine their level of economic disadvantage for the E-rate program by measuring the percentage of student enrollment that is eligible for free or reduced price lunch under NSLP or a federally approved alternative mechanism. We propose to standardize USAC's

collection of NSLP data by requiring schools to use the NSLP information reported by state agencies to USDA's Food and Nutrition Service (FNS) and by requiring schools that participate in NSLP to use NSLP data for purposes of determining their discount rate. Both measures will simplify the application process for schools and libraries, reduce the administrative burden on USAC, and reduce the risk of applicant error in calculation of NSLP participation that can have negative consequences for applicant funding requests.

14. State Reported NSLP Data. We propose to require schools and libraries that use NSLP data to calculate their E-rate discount rates using the school district's NSLP information that is reported by their state agency to FNS. Currently, only some schools and libraries use state-reported NSLP data when calculating their discount rates. By November 15<sup>th</sup> of each year, after requisite income verifications are complete, states report their consolidated NSLP eligibility data to FNA using Form FNS 742 – School Food Authority (SFA) Verification Collection Report.

15. We propose to require schools and libraries to use state reported NSLP data on the basis that it should reflect the most accurate and verifiable accounting of a district's NSLP participation rate. Requiring the use of state reported data should reduce the frequency with which USAC issues commitment adjustment decision letters after it has identified an error in a school or school district's discount eligibility reporting. We seek comment on the benefits and drawbacks to this proposal. Do all states and territories report NSLP data to FNS by November 15<sup>th</sup> every year? In the accompanying Report and Order we have required school districts to apply for E-rate support using the district-wide average of their student population's NSLP eligibility. Is state reported NSLP data available on a district-wide basis and is it calculated in a way that is consistent with our new discount rate calculation rules? When does state reported NSLP data become available to schools? Can libraries access information about state-reported NSLP data? Would the requirement to use state-reported NSLP data impact Tribal schools and libraries, and if so, how so? Is there alternative reporting data that would better reflect the level of economic disadvantage for Tribal schools and libraries? Is there other better reporting data that we should use for any other set of schools?

16. If we use state reported data for determining E-rate discount rates, that data would always be a year behind. Should there be a process through which school districts can use more current information that is subject to the same level of review as the state reported NSLP data? What should that process be? We also seek comment on how the use of state reported NSLP data impacts schools' and libraries' E-rate application process. Would the use of state reported NSLP data provide an advantage for some school districts over others? Does the requirement to use this data unfairly favor certain types of applicants over others? Are there additional reasons why state reported data would disadvantage schools or libraries or complicate the application process? Commenters should explain any response and provide specific examples.

17. In the accompanying Report and Order, we adopted USDA's CEP allowing participating schools to use their CEP data and multiplier to determine eligibility for E-rate support. The E-rate program also accepts information from schools and school districts participating in USDA's Provision 1, 2 and 3. How would schools and school districts participating in these alternative NSLP provisions (CEP and Provisions 1, 2 and 3) be affected by a state reported data requirement?

18. Mandatory use of NSLP data for schools that participate in the NSLP. We next propose to require schools that participate in the NSLP to use their NSLP eligibility data when calculating their E-rate discount rate. Currently, under the E-rate program, even schools that participate in the NSLP can choose to use a federally approved alternative mechanism, such as a survey, as a proxy for poverty when calculating E-rate discount rates. Requiring schools that participate in NSLP to use NSLP eligibility rates to calculate their discount rates will further simplify the application process for the schools and it will also speed review of applications as income surveys and other alternatives are more time-consuming to review. It will also help ensure the program's integrity by protecting against waste, fraud, and abuse. We seek comment on the benefits and drawbacks to this proposal. We seek comment on whether there are additional considerations for why an NSLP participant may need to use an alternative method for discount calculation.

**D. Encouraging Consortium Participation**

19. By aggregating purchasing across many schools and libraries, consortia can drive down the prices of E-rate supported services. In the accompanying E-rate Modernization Order, we adopted changes to our rules to encourage consortium purchasing. In the interest of doing more to encourage consortia, we seek further comment on how to break down barriers to schools and libraries joining consortia. Specifically, we propose to change the way consortia discount rates are calculated and also seek comment on additional ways to encourage consortium participation.

**1. Consortium Discount Rate Calculations**

20. Under the current rules, a consortium lead calculates the consortium discount rate by taking a simple average of the discount rates of all the consortium members. The Commission has said that consortium leads are expected to adjust the discount rate received by each member to more closely reflect that member's individual discount rate. Despite that direction from the Commission, commenters suggest that consortium leads sometimes assign the consortium discount rate to all members regardless of members' individual discount rate, which deters high-discount rate applicants from joining consortia because the consortium discount rate is often lower than their own rate. Moreover, even if a consortium lead tries to adjust the discount rate received by each applicant to more accurately reflect what the discount rates would be outside of the consortium, the mix of applicants and the types of services selected may make it impossible for a consortium lead to give every applicant the discount rate to which it would have been entitled if it had applied for services on its own. Indeed, the current consortium calculation formula permits and encourages consortia to inflate their discount rate by taking on high-discount members with few students because each member has the same impact on the consortium discount rate regardless of its student count. For the same reason, the current calculation discourages consortia from taking on smaller members whose discount rate is lower than the consortium's average without the additional district, school, or library.

21. We therefore propose to require consortia with only schools or school districts to use a weighted average formula that would account for the number of students in each member school or school

district as well as the individual discount levels. Under this proposal, a consortium lead would calculate the consortium discount rates by multiplying each member's individual discount rate by its number of students, adding those figures for each member and then dividing by the total number of students in the consortium. After determining the consortium discount rate, the consortium lead could then adjust each member's funding so that it better reflects each member's individual discount rate. We seek comment on whether we should require the consortium lead to adjust each member's funding. By using the weighted average, consortia should be better able to allocate the funding according to each applicant's own discount rate. We seek comment on the benefits and drawbacks of such an approach, and on whether it would encourage more schools and school districts to join consortia. We also seek comment on whether there are any safeguards we need to put in place to ensure that consortia leads equitably allocate funding. Some services, such as fiber backbone access, are shared among consortium members, which makes it difficult for consortium leads to determine the proportion of the service each member uses. Are there additional issues we need to consider for such shared services?

22. For consortia composed of schools and libraries or just libraries, we seek comment on how best to calculate a weighted average discount rate, given that libraries do not have student counts. We propose to count each 50 square feet of library space as one student for the consortium discount rate calculation. For example, a library with 5000 feet of library space would count as 100 students in the discount calculation (5000 divided by 50). If that library had a 50 percent discount rate and formed a consortium with a school district with 500 students and an 80 percent discount rate, the consortium discount rate would be 75 percent. We seek comment on the benefits and drawbacks to this approach. Would a formula based on number of patrons, volumes of books or another square footage benchmark be better substitutes for student count? Are there any other better and/or simpler alternatives?

23. We also seek comment on how common it is for consortium leads to re-adjust the consortium discount rate for each member to more accurately reflect that member's individual discount rate. Additionally, we seek comment on how common it is for consortia to seek to inflate their discount rates by adding high-discount members with few students. If consortium leads neglect to re-adjust each

member's discount rate, would the weighted approach we propose be sufficient to encourage high-discount applicants with many students to join consortia?

24. Using a weighted average of the discount rate of all consortium members should reduce the risk that any one member's discount rate is greatly different than if the member did not join the consortium. There will continue to be circumstances, however, under which an applicant's discount rate is still reduced by virtue of joining the consortium. Therefore, in the alternative, we seek comment on whether we should require consortium leads to submit applications for E-rate support that would ensure each consortium member receives the exact discount rate it would be entitled to if it were to apply for services on its own. To do this, the consortium lead would create separate funding requests in an application for each group of consortium members who share the same discount rate. For example, the consortium lead would group into one funding request all consortium members with an 80 percent discount rate and all consortium members with a 60 percent discount rate into another funding request. Under the new district-wide discount calculation we introduce in the accompanying Report and Order, there would only be a limited number of discount rate groups in each consortium because most discount rates will be the round numbers in the discount matrix. To the extent a consortium application included shared services, the lead would explicitly cost-allocate those services among the different funding requests. We expect that this approach would encourage consortium participation for high-discount entities by guaranteeing them the same discount rate as a consortium member that they would have as an individual applicant. We seek comment on this alternative. Would ensuring that high-discount applicants receive the same discount rate whether they apply for services as a consortium member or individual applicant encourage consortium participation for high-discount applicants? Would grouping discounts by funding request be too administratively burdensome for consortium leads? We understand that some consortia have only one payer and that this grouped approach would not provide them with any additional benefit. We seek comment on how common it is for a consortium to have one payer. Would the benefit to consortia with multiple payers outweigh the administrative burden on consortia with multiple payers?

25. We seek comment on the advantages and disadvantages of these options and welcome

suggestions for other methods for calculating consortium discount rates.

## **2. Additional Ways to Encourage Consortium Participation**

26. We seek comment on additional programmatic or rules changes we can adopt to encourage consortium participation.

27. For example, to ensure that applicants receive the most cost-effective services possible, should we require applicants to consider services on all master contracts available to them in the bid evaluation process? What would be the advantages and disadvantages of such a rule? How could we ensure that applicants would be aware of the services available to them on master contracts? Would requiring applicants to consider options from all master contracts available to them in their bid evaluations be unduly burdensome for small applicants? What can we do to accommodate the unique financial constraints that schools and libraries on some Tribal lands deal with and the unique relationships among Tribal Nations. Should we, for example, establish different consortia rules for schools and libraries on Tribal lands or operated by Tribal Nations? What should such rules be?

28. The Education Coalition has proposed a model that would provide an additional 5 percent discount rate for consortia meeting minimum size standards. The Education Coalition's specific proposed requirements for receiving an additional incentive are that the participating entities (1) serve at least 30 percent of the students in a state, include at least 30 percent of the local education agencies in the state, or be designated as a consortium by the state, (2) document the participation of individual entities, (3) maintain a level of governance, (4) perform large-scale, centralized procurement that results in master contracts, and (5) open participation to all eligible schools and libraries, including public charter schools and private schools. We seek comment on the Education Coalition's proposal and more generally on the merits of providing an additional 5 percent incentive for consortia.

29. Would applicants be more likely to form consortia if an additional 5 percent discount were available for consortia? Should the discount of consortia be limited to the otherwise-applicable top discount rate, regardless of the additional discount (i.e., top discount of 90 percent for category one

purchases and 85 percent for category two purchases)? The Education Coalition contends that high-performing state and large regional consortia have a track record of lowering prices. Should demonstrated effectiveness in lowering prices be a condition of any additional consortium discount? For example, should an additional discount only be available to consortia that show that their pricing is at least 10 percent better than the state average? Would the minimum size thresholds in this proposal ensure that consortia are large enough to receive significant discounts? Would states designate small groups that do not have much bulk buying power as consortia so that they can take advantage of the additional discount? Should we therefore limit or eliminate the separate state designation prong of the Education Coalition proposal? How would the Education Coalition's proposal affect those E-rate participants who, because of their geographic location, receive the best prices from smaller, local service providers? The Education Coalition's proposal would allow libraries to participate in consortia eligible for an additional discount rate, but only if the libraries participate in consortia with schools and school agencies. Are there ways it should be modified to ensure libraries can get the benefits of such consortia? For example, should we require that all such consortia make their prices available to all libraries within the area encompassed by the consortium, and allow libraries to take advantage of these contracts without conducting a separate bidding process? Should there be an alternative approach that allows for consortia made up only of libraries or only of schools? How would this proposal affect schools and libraries on Tribal lands or operated by Tribal Nations? We also seek comment on any administrative challenges that consortia face that were not raised in comments to the E-rate Modernization NPRM. What rules can the Commission enact to alleviate those issues?

30. Other commenters have proposed that we permit private-sector entities to join consortia with E-rate participants. Our rules now prevent ineligible private sector entities from joining such consortia unless the pre-discount prices for interstate services are at tariffed rates. We seek comment on the potential advantages and disadvantages of permitting private sector entities to join E-rate consortia.

31. Would a consortium consisting of E-rate participants and private-sector entities provide the economy of scale sufficient to reduce the cost of E-rate eligible services and encourage E-rate



participants to join consortia, particularly in rural areas? Is there any data or other information showing the impact on connectivity or pricing that allowing this consortium combination? What safeguards would we have to put in place to ensure that the Fund does not support services used by ineligible entities? Would prohibiting private-sector consortium members from using membership in the consortium to evade generally tariffed rates be a sufficient safeguard? In rural areas where abundant fiber is available for private-sector entities but not for schools and libraries, are there additional rule changes that we can implement to allow schools and libraries to gain access to that fiber?

**E. Ensuring Support for Libraries is Sufficient**

32. As part of our effort to ensure affordable access to robust connectivity for all libraries, we seek additional focused comment on the funding eligible libraries need in order to deploy robust LANs/WLANs within their buildings and the best method(s) to calculate libraries' internal connections budgets. In the accompanying Report and Order, we set a pre-discount budget of \$2.30 per square foot for libraries with a pre-discount funding floor of \$9,200 in category two support available for each library over five years for those libraries that apply for E-rate support in funding years 2015 and/or 2016. In so doing, we have recognized that the record of library funding needs for internal connections is not as robust as we would like, and not all parties agree with the square-foot based budgeting approach we have chosen to adopt. We therefore seek additional focused comment on the approach we use to calculate libraries' budgets.

33. In particular, we seek additional comment on whether we should adopt another metric in addition to or instead of square footage to set library budgets. Should we establish more than one method of establishing a library's budget and give libraries the option to choose a method based on their particular community, architecture, and service levels? If we allow libraries the option to choose between different methods, should we libraries be locked in to the selected budget each subsequent funding year or should libraries be able to select a method each funding year?

34. We also seek additional comment on the appropriate funding amount for each library. Some commenters suggest that a \$2.30 per square foot pre-discount budget is not enough support to

ensure that libraries are able to deploy the necessary networks to meet the needs of their communities. In particular, the Urban Libraries Council argues that libraries should receive E-rate funding of no less than \$4.00 per square foot. In light of these comments, we seek additional data on efficient library deployments. We also seek additional data on the LAN/WLAN deployment costs in small libraries, and whether the \$9,200 funding floor adopted above is either too high or too low.

## **II. PROCEDURAL MATTERS**

### **A. Initial Regulatory Flexibility Act Analysis**

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (FNPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

36. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.

### **B. Need for, and Objectives of, the Proposed Rules**

37. This FNPRM is a part of the Commission's continual efforts to improve the E-rate program. In the accompanying Report and Order, we adopt the goals for the E-rate program (1) ensure affordable access to high-speed broadband sufficient to support digital learning in schools and robust

connectivity for all libraries, (2) maximize the cost-effectiveness of spending for E-rate supported purchases, and (3) make the E-rate application process and other E-rate processes fast, simple and efficient.

38. The rules we propose in this FNPRM will enable us to meet these goals. Specifically, we propose to require that multi-year contracts be competitively bid at least every five years, require applicants to use state-audited National School Lunch Plan (NSLP) data when calculating discount rates and require consortia to calculate discount rates using a weighted average of the discount rates of all consortium members.

**C. Legal Basis**

39. The legal basis for the FNPRM is contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

**D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

40. We have described in detail in the Final Regulatory Flexibility Analysis in this proceeding, *supra*, the categories of entities that may be directly affected by our proposals. For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

41. Several proposals under consideration in the FNPRM may, if adopted, result in additional recordkeeping requirements for small entities, but other proposals will reduce recordkeeping requirements for small entities.

**1. Proposed Rules that Lessen Reporting Burdens**

42. Efficient use of NSLP data. Our proposal that E-rate applicants be required to use state-audited NSLP data to determine their E-rate discount rates will reduce administrative burdens on applicants because they will no longer be permitted to use federally-approved alternatives such as surveys to determine discount rates.

## **2. Proposed Rules that Increase Reporting Burdens**

43. Multi-year contracts. Our proposal to require certain contracts to be open to competitive bidding at least once in every five year period could increase recordkeeping requirements by requiring applicants to solicit and evaluate bids for E-rate support more frequently than they would without the rule. Overall, the benefit the Fund will realize in ensuring that applicants take advantage of falling market prices outweighs the burden on this requirement.

44. Consortium discount rates. Our proposal to require consortia to calculate discount rates using a weighted average of all consortium members could increase recordkeeping requirements by making the discount rate formula more complex for certain consortia. The benefit of encouraging consortia participation by ensuring that consortium members receive discount rates closer to their individual discount rates outweighs this burden.

### **F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

45. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

46. We proposed alternatives and sought comment on alternatives to our proposals that would be less burdensome to small entities. For example, we seek comment extending the duration between re-bidding on contracts that would index terms to market prices and bandwidths and contracts for fiber builds. Additionally, we seek comment on an alternative discount calculation that could reduce recordkeeping requirements for small applicants.

47. As noted, the proposals and options being introduced for comment will not have a significant economic impact on small entities under the E-rate program. Indeed, the proposals and

options will benefit small entities by simplifying processes, ensuring access to broadband, maximizing cost-effectiveness and maximizing efficiency. We nonetheless invite commenters, in responding to the questions posed and tentative conclusions in the FNPRM, to discuss any economic impact that such changes may have on small entities, and possible alternatives.

**G. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

48. None.

49. It Is Ordered that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**H. Initial Paperwork Reduction Act Analysis**

50. The FNPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

**I. Ex Parte Presentations**

51. Permit-But-Disclose. The proceeding this FNPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made

during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

#### **J. Comment Filing Procedures**

52. Comments and Replies. We invite comment on the issues and questions set forth in the FNPRM and IRFA contained herein. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this FNPRM by September 15, 2014 and may file reply comments by September 30, 2014. **All filings related to this FNPRM shall refer to WC Docket No. 13-184.** Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed

to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

53. In addition, one copy of each paper filing must be sent to each of the following: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554; website: [www.bcpiweb.com](http://www.bcpiweb.com); phone: (800) 378-3160; (2) Lisa Hone, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, SW, Room 6-A326, Washington, DC 20554; e-mail: [Lisa.Hone@fcc.gov](mailto:Lisa.Hone@fcc.gov); and (3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, SW, Room 5-A452, Washington, DC 20554; e-mail: [Charles.Tyler@fcc.gov](mailto:Charles.Tyler@fcc.gov).

54. Filing and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its website: [www.bcpi.com](http://www.bcpi.com), by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), by telephone at (202) 488-

5300 or (800) 378-3160 or by facsimile at (202) 488-5563.

55. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the FNPRM in order to facilitate our internal review process.

56. For additional information on this proceeding, contact or James Bachtell at (202) 418-2694 or Kate Dumouchel at (202) 418-1839 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

### **III. ORDERING CLAUSES**

57. According, It Is Ordered, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, this Further Notice of Proposed Rulemaking is Adopted effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

58. It Is Further Ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Sheryl D. Todd,  
Deputy Secretary.



## **Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54, as follows:

### **PART 54—UNIVERSAL SERVICE**

#### **Subpart F—Universal Service Support for Schools and Libraries**

1. The authority citation for part 54 continues to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.505 by revising paragraph (b)(4) to read as follows:

#### **§ 54.505 Discounts.**

\* \* \* \* \*

(b) \* \* \*

(4) School districts, library systems, consortia, library consortia and other billed entities shall calculate discounts on supported services described in § 54.502(b) that are shared by two or more of their schools, libraries or consortium members by calculating a weighted average based on the number of students in each consortium member. The weighted average shall be calculated by multiplying each member's individual discount rate by its number of students, adding those figures for each member and then dividing by the total number of students in the consortium. Libraries that are consortium members shall substitute 50 square feet of library space for each student.

\* \* \* \* \*

[FR Doc. 2014-18936 Filed 08/18/2014 at 8:45 am; Publication Date: 08/19/2014]